

WATER CONTROL AND IMPROVEMENT DISTRICTS—
RIGHT OF EMINENT DOMAIN AND ASSESS-
MENT OF TAXES.

S. B. No. 586.]

CHAPTER 275.

An Act to amend Section 14 of Chapter 280 of the Acts of the 41st Legislature of Texas, Regular Session, and clarifying the intent of said Section 14 as the same would relate to Section 132 of Chapter 25 of the Acts of the 39th Legislature, Regular Session; defining certain terms used in this Act; expressing the reasons for the enactment hereof and designating the Statutory Acts to be amended and clarified hereby; to be Section 126 of said Chapter 25 and providing procedures whereby the Districts may exercise the Right of Eminent Domain; also, providing for the organization of Tribunals of Original Jurisdiction (within the meaning and intent of Section 1 of Article 2 and Section 1 of Article 5 of the Constitution of Texas); prescribing the jurisdiction and powers thereof and the manner of procedure therein and thereby; also, providing for appeals from such Tribunals to the District Court; also, prescribing the matters which may be considered on appeal and providing the procedure to be observed in the District Courts upon a hearing of such appeals; prescribing the qualifications for the members of said Tribunal, and the manner of their selection and appointment by a District Court; and, also, providing the manner in which the members of said Tribunal shall qualify and be organized; prescribing the manner in which proceedings for condemnation may be initiated in said Tribunal; also, fixing compensation to be paid to the members of said Tribunal; prescribing the procedure of said Tribunal for proceeding to a final decree of condemnation and fixing the manner and form in which such decree shall be rendered; prescribing the form for the notice, or citation, to be given concerning procedures before said Tribunal; providing for appearance of interested persons, either in person or by attorney for the presentation of their claims, together with evidence in argument and support thereof; providing that after such hearing said Tribunal shall proceed to enter their final decree of condemnation of property, either within or beyond the boundaries of the District, wherein they shall fix compensation for property to be condemned, award damages, and costs; providing that the final decree of condemnation concerning the property in each County shall be filed with the County Clerk, and constituting said record notice of the contents of such decree; providing the exact manner in which an appeal may be prosecuted to the District Court and specifying those matters concerning which an appeal may be prosecuted; also, prescribing the exact manner in which the appeal may be affected and the manner in which the same shall be heard and determined by the District Court; providing for the manner in which awards of compensation and damages shall be secured to be paid, and further providing that no property may be taken under condemnation until compensation shall have been paid, or secured to be paid by a deposit as in this Act is provided; providing that a District shall have the right to elect to proceed to condemnation under the provisions of Title 52 of the Revised Civil Statutes of Texas, 1925, or under the provisions of this Act; also, providing that Counties, Navigation Districts, and Levee Districts of this State shall have the right to elect to proceed to condemnation under the provisions of this Act; stating the reasons constituting an emergency and declaring the same.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. (Defining the meaning and intent of certain terms as used in this Act.) 1. The words "Chapter 25" shall

be understood to designate Chapter 25 of the General Laws enacted by the 39th Legislature of Texas, Regular Session. 2. "Chapter 280" shall be understood to designate Chapter 280 of the General Laws enacted by the 41st Legislature of Texas, Regular Session. 3. The word "person" shall be understood to include persons, co-partnerships, associations, corporations, governmental agencies or bodies politic, and shall be held to include both the singular and the plural. 4. The word "District" shall designate a Water Control and Improvement District. 5. Where reference is made to any specific Statutory provision, unless otherwise specifically provided herein, it shall be intended to refer to the same as it now is and as well to include any future amendment thereof. 6. The words "this Act," or "said Act," where not otherwise specified, shall be understood to mean said Chapter 25, and, or, any amendment thereof, and especially to include said Chapter 280, and, or, the provisions of this Act. 7. The word "property" as used in this Act shall be understood to mean property real, person or mixed and shall include land, interests, of every character, therein; improvements therein; all other property situated upon or attached to land and, as well, any right involving the use of, or any easement upon, land. 8. The word "Tribunal" shall be understood to mean a Tribunal to have original jurisdiction of proceedings for condemnation hereunder, and to exercise Judicial functions within the meaning and intent of Section 1 of Article 2 and Section 1 of Article 5 of the Constitution of Texas.

SEC. 2. (Expressing the reasons for the enactment hereof and designating the Statutory Acts to be amended hereby) (a) Section 140 of Chapter 280 purported to amend and consolidate Sections 126 and 132 of Chapter 25, and did provide in lieu thereof a new Section 132, which probably would have the effect to repeal the original Section 126 (providing the procedure for the exercise of the Right of Eminent Domain by Water Control and Improvement Districts) and Section 132 (providing for fixing taxes upon a basis of specific benefits by a District), both of Chapter 25. (b) A recent decision by the Supreme Court of Texas has declared the most material provisions of Section 14 of Chapter 280 to be void as constituting a legislative attempt to invade the province of the Judicial Department of the State's Government by conferring Judicial functions on an Administrative body in contravention of Section 1 of Article 2 of the Constitution of Texas. The effect of said decision is to render uncertain the means by which a District may assess taxes on a basis of specific benefits; and, will deny to Districts the right to exercise the more practical, economical and equitable procedure for condemnation, intended by the Legislature to be conferred by said Section 14; wherefore, said Section 14 of Chapter 280 hereby is repealed, and in lieu thereof it is provided as follows, viz:

(a) Original Section 132 of Chapter 25 of the Acts of the 39th Legislature, Regular Session, hereby is established not to have been repealed by the enactment of said Section 14

of said Chapter 280 (said Section 14 having been declared invalid), but instead thereof the said original Section 132 shall be held to have been and shall be, in full force and effect.

(b) Section 14 of Chapter 280 hereby is expressly repealed, and in lieu thereof, there shall be provided as is set forth in Section 3 of this Act.

SEC. 3. (To be Section 126 of Chapter 25, and providing elective procedures whereby a District may exercise the Right of Eminent Domain. Also, providing for the organization of Tribunals of Primary Jurisdiction (within the meaning and intent of Section 1 of Article 2 and Section 1 of Article 5 of the Constitution of Texas), prescribing the jurisdiction thereof and providing for appeals to District Courts from the findings and decrees of such Tribunals of Primary Jurisdiction; also, prescribing the matters which may be considered on appeal and providing the procedure to be observed in the District Courts upon the hearing of such appeals.)

"Section 126. For the purpose of condemning property (as herein defined, all Districts now operating or hereafter to be operating, as Water Control and Improvement Districts, shall have the right to proceed as herein after provided for, viz:

(a) The Board of Directors of the District shall have the right to elect to proceed for condemnation under the provisions of Title 52, Eminent Domain, of the Revised Civil Statutes of Texas, Code of the year 1925, and as therein provided for condemnation by counties, save as otherwise specifically is provided by this Act; or, if such Board of Directors by their Order for condemnation so elect, the District shall have the right to proceed for condemnation in the manner hereinafter provided, viz:

(b) At any time, or separate times, after a District has adopted a plan for improvements, so that it may definitely be determined what property should be acquired in fee simple, or placed under easement, as being, either instantly or prospectively, needed for, or incident to, or helpful for, accomplishing the objects of the District, and to effect the efficient and economical operation thereof, the Directors of the District may cause to be presented to the Judge of any District Court for a Judicial District in which any part of the District may be located, either in term time or in time of vacation, a petition praying the Court to appoint a Tribunal of three men who collectively shall constitute a Tribunal to exercise Judicial functions within the limits of this Act. This petition shall be docketed as provided for causes and the Order thereon shall be entered in the Minutes of the Court. In said petition the Directors shall nominate for appointment three men of lawful age who shall have qualifications as follows: All shall be qualified electors of this State; one shall be a lawyer deemed to be learned in the Law of Eminent Domain, and the exercise of rights thereunder; two shall be men deemed to have good knowledge of the value and uses of lands, injuries to lands, and

benefits to lands to be affected by the proposed condemnation; all shall be disinterested men, of good moral character; no one of them may knowingly be related within the third degree of consanguinity or affinity to any member of the Nominating Board, or the Judge having jurisdiction, or to any person known to be asserting title to, or an interest in, any property proposed to be condemned.

(c) If the District Judge having jurisdiction be disqualified because of interest, or if he from any cause be absent from his District or does not act, the said petition may be presented to a Judge for any Judicial District lying adjacent to the District of the original presentation. Said petition shall be sufficient if it states that necessity for condemnation by the District has arisen and gives the name of the County or Counties in which the property to be condemned is situated. Said petition shall contain the name and address of each person known to have title to or an interest in any property proposed for condemnation. If no address is known, and could not be ascertained by the use of reasonable diligence, the petition shall so state. Notice of the hearing on said petition shall be as follows: The notice shall be written or printed and shall give advice of the time and place and object of the hearing on said petition, and shall state that all interested persons will be heard to make objection to any person by said petition nominated for appointment. The District Judge having jurisdiction shall set said petition down for hearing for a time not less than ten (10) days nor more than fifteen (15) days after the day of the presentation of said petition, and shall cause the Clerk of his Court, not less than five (5) days prior to the day set for the hearing of said petition, to send to each owner whose name and address is given in the petition, by registered mail, a copy of the notice hereinbefore provided for; and, in addition thereto there shall be citation by publication by publishing said notice in one or more newspapers having general circulation in the area to be affected by the condemnation proposed, which publication shall be circulated one time on a day not less than five (5) days prior to the day set for the hearing of said petition, and such publication shall be given the effect of actual service on all interested persons, whether known or unknown, and whether named or not named in said petition. At the time and place fixed by the District Judge for the hearing of the petition, and after hearing protest by all interested persons, the Judge, for good cause shown, may refuse to appoint any or all of those persons nominated in the petition and, in lieu thereof, he may appoint other persons deemed by him actually to be qualified under the provisions of this Act. If good cause for refusal is not established the Judge shall appoint the persons nominated in the petition, whereupon said proceeding shall be terminated, and no appeal from the action of the Court can be maintained. The costs of procedure hereunder shall be paid by the District proposing condemnation. In case any mem-

ber of the Tribunal so constituted does, from any cause fail or refuse to act, or become disqualified to act, he by petition to the Court of Jurisdiction may be removed and a qualified substitute nominated and appointed to serve in his place after observing the same procedure as hereby is provided for an original appointment, except that citation by publication shall not in such instance be required; the written notice shall be instantly deposited in the mail; and, the hearing may be held on the third day after notice is deposited in the mail, or as soon thereafter as the Court may be able to act on the petition. In case of disqualification of some member of the Tribunal for Condemnation to act as to some parcel of property because of interest or relationship, a substitute may be appointed to serve only in the matter as to which the disqualification exists, provided, however, that in such case notice shall be given only to the person interested in the property to which the disqualification is related.

(d) Within ten (10) days after such appointment, or as soon thereafter as is practicable, each person so appointed shall file with the Secretary of the condemning District a written oath to be substantially as follows: "I swear (or affirm) that I, as a member of the Tribunal to hear and determine matters incident to the condemnation proceedings instituted by (insert name of the District) will fairly, impartially, and without interest, prejudice or favor, discharge my duties as a member of the Tribunal appointed by the Judge of the District Court for the District of Texas." So qualified, they collectively shall be established to be a Judicial Tribunal within the meaning and intent of Section 1 of Article 5 of the Constitution of Texas, and they shall have all such duties and powers for procedure and for effecting the administration of Justice (insofar) as is appropriate to accomplish the purpose of this Section 126) as now are, or as hereafter may be, conferred on County Courts and the judges thereof.

(e) The lawyer member of said Tribunal shall be their advisor as to matters of law. The words "they" or "them" as hereinafter used, unless otherwise stated, will be understood to refer to the "Tribunal for Condemnation." They may organize for the dispatch of business as they deem best, save that two members shall be required for a quorum and no matter may be decided save by the concurrence of at least two members. The proceedings shall be as free from technicality, and as summary in character as will in fact accomplish substantial justice. The Clerk of the District shall furnish them the service of a competent person to serve them as Clerk, and orderly Minutes of their proceedings shall be kept; such Minutes shall be signed by all participating members, and shall be a public record. The Tribunal shall have a seal bearing the name of the District and the words "Tribunal for Condemnation."

(f) (Prescribing the conditions under which and the manner by which the District may, from time to time, present to the

Tribunal petitions for condemnation and fixing the requisites of such petitions.) At any time or times after the adoption and approval of plans for improvements (or for the enlargement, extension or alteration thereof), as required by Subdivision (b) of this Section, the Board of Directors of the District may order the condemnation of any land or other property, and therein may elect to condemn the fee simple title to land, or to condemn an easement only. It further is intended that part of any given tract of land may be condemned in fee simple, and part placed under an easement only. The Order of Condemnation shall be recorded in the Minutes, and it shall be sufficient if it within itself or by reference to exhibits, which may be maps or plats, makes certain that land to be placed under condemnation in fee simple, that land to be placed under an easement, and, in appropriate case to identify any other property which is required to be taken; provided, however, that when by the exercise of reasonable diligence, the name and address of any owner or owners of each separate tract of land, can be given, the same shall be stated and appropriately related to the property as to which the ownership exists. Said Order shall contain a general statement showing the necessity for the taking, but no such Order shall be held invalid because of fault in such statement. It, further, is provided that any such Order may be amended in any and every particular, at any time during the further proceedings herein established, provided only that any person affected by such amendment, or his agent or attorney, must be given actual notice of such amendment before any action is taken thereunder. Said Order for Condemnation and all exhibits thereto shall be prepared in duplicate, and one such shall be delivered to the Clerk of the Tribunal for Condemnation, and by him filed as a record of said Tribunal, where the same shall constitute a petition for condemnation.

(g) The Secretary of the Board of Directors shall serve the Tribunal as a secretary, or said Secretary, subject to approval by the Tribunal, may appoint another well qualified person to serve as a secretary, and the person so acting shall attest all records and reports as "Secretary." The person appointed so to serve shall take and subscribe an oath that he will keep and preserve a true written record of all material proceedings, findings, appraisements and assessments concerning the duties of said Tribunal. Such Secretary shall furnish to said Tribunal such information and assistance as may be within his power and necessary to the performance of its duties.

(h) Said Tribunal shall have jurisdiction and the power to do and to decree all those matters and things by this Act provided to be done by said Tribunal.

(i) Within thirty (30) days after qualifying and organizing as hereby directed, the Tribunal shall begin the discharge of its duties, and may at all times require the presence and necessary

assistance of the District's Engineers and Attorneys, to the end that it may be able intelligently to perform its duties.

(j) Said Tribunal shall proceed to view all the lands, or other property, both public and private, both inside the District and beyond the boundaries of the District, which may have been ordered to be condemned. The findings of the Board of Directors of the District, after advice by the District's Engineers, as to the seeming necessity, or advisability, to acquire any such property or part thereof in fee, or alternately under an easement, for any purpose connected with or incident to, the full completion and practical operation of the improvements contemplated to be, instantly or ultimately, provided under the District's plans for improvements, shall be final and not subject to Judicial Review save for fraud, palpable error or such arbitrary act as would constitute actual fraud; provided, however, that the Directors shall receive, hear and determine protests or recommendations relating thereto, as is provided in Section 42 of said Chapter 25. Such determination shall be made by the Directors before the Tribunal proceeds to viewing property as herein provided, and the specific identifying conclusions of the Directors shall be furnished to the Tribunal. This record shall be accompanied by a designation of all property, or easements, or agreements for liquidated damage, which have been placed under voluntary option to, or adjustment with, the District. The Tribunal shall omit consideration of any matter already so adjusted. Said Tribunal shall appraise and assess the values of all affected lands, easements or property rights within and without the District, and shall specifically appraise and assess the damages justly to compensate and liquidate all injuries to be done to each item of property affected. In assessing the value of property sought to be condemned, damages and compensating benefits, said Tribunal shall be governed by the provisions of Article 3265 of the Revised Civil Statutes of Texas. All provisions of Title 52 of the Revised Civil Statutes of Texas, shall control condemnation proceedings hereunder as to all matters not herein otherwise provided for, but the specific provisions, and intent, hereof shall control in all cases of doubt. It is provided, however, that the Directors of a District may by their Order entered of record elect to waive the provisions of this Section, insofar as the same relate to procedure for condemnations, and in such event the procedure for condemnation may be the same as that prescribed for counties as the same is provided in Title 52 of the Revised Civil Statutes of Texas.

If said Tribunal shall omit to return or assess damages to any specific parcel of property, either within or without the District, it shall be deemed an affirmative finding that no damage will be done to the omitted parcel of property.

The Tribunal shall prepare a specific and detailed proposed report of their findings, which shall show the owner of each parcel of property examined, and on, or concerning which, any

appraisements, award, finding, or assessment is made, together with such description of such property as will identify it and relate it to the appropriate appraisal, award, finding or assessment. This record shall separate and distinguish: (1) the value of property to be taken by the District in fee simple: (2) the amount of compensation for an easement to be taken by the District: (3) the amount required to precompensate and justly to liquidate the the injury or damage to be done to property not being condemned and taken in fee simple or placed under an easement: (4) such record shall, in an appropriate case, specify the parts of a parcel of property falling within more than one of the classifications herein given and shall allocate to each portion its appropriate classified assessments.

The record herein specified shall be prepared in triplicate and shall be approved and signed by at least two members of the Court hereby constituted:

The proposed report shall show the number of days each member has actually served and the actual expenses necessarily incurred by each in serving the District; each shall be paid by the District reasonable fees and in no event to exceed Twenty-five (\$25.00) Dollars per day of service, together with his actual expense as the same be approved. Said Tribunal in its proposed report shall fix times and places when and where they shall hear objections to their findings as reported. In fixing a place, or places, for hearing objections, the Tribunal shall have regard to the prevailing convenience of the property owners.

(k) When the proposed decree shall have been delivered to the Secretary of the Board of Directors of the District, the same shall become a permanent record of the District, and shall be open to examination by all persons interested therein. Upon the filing of such report the Secretary of the District shall forthwith give notice thereof by publication in one or more newspapers giving general circulation in the District and in each of the counties in which there may be located any affected property, once a week for two consecutive weeks prior to the day fixed for a hearing, or hearings. It is provided that each hearing as to land situated in any given County shall be held in the County of the location of the land proposed to be condemned, and in such part of said County as will be most convenient to the majority of the land owners. One notice may specify a hearing day and place for one County only, and there may be notice for different days and places of hearing for other counties; the first publication must appear not less than fourteen (14) days prior to the hearing. The published notice shall be in substantially the following form:

LEGAL NOTICE

To the owners of, and all other persons having an interest in lands or other property lying in.....County....., Texas: Take notice that a copy of the adopted plans for improvements byCounty Water Con-

trol and Improvement District Number _____, are now open to inspection by any one interested therein at the District's office at _____, Texas: These plans, contour maps and specifications will make manifest how your property will be affected. The Tribunal heretofore appointed have appraised and assessed property values, and benefits and damages accruing to the affected lands, and other property, both within and without this District, which will be condemned and taken, or subjected to an easement, or damage, or otherwise affected by carrying out the plans for improvements to be provided by this District. The recorded report of said Tribunal is open to inspection by any interested person at _____, in _____, Texas: Any interested person may make specific written objections thereto in whole or in part, and any person claiming damage to their property, within or without the District, as to which no damages have been assessed in said report are required to file an itemized claim for such damages in the District Office on or before the _____ day of _____, and all persons failing to make such objection or claim for damages will be deemed to have waived the same. Further, take notice that the said Tribunal of Appraisement will meet on the _____ day of _____, at _____, Texas, for the purpose of hearing and acting on objections to their proposed decree, and to hear, consider and determine claims for compensation and damages.

Secretary

The Secretary of the Board of Directors of the District also shall, at least ten (10) days prior to the day for any given hearing, mail a written notice to each person whose land, or other property, is listed in the proposed report of the Tribunal, if the post office address is known, stating the time and place of the meeting which such person is expected to attend, which notice shall state appropriately and in substance that the report of the Tribunal to assess burdens upon, values of, benefits to, and damages to, the lands and other property which will be affected by the District's plans for improvements, has been filed in the District's Office, giving the location thereof, and that the advised person may examine the same together with the District's plans, contour maps, and specifications, and make and file written specific objections to all or any part of such report; further, that the Tribunal will meet on the day and at the place named for the purpose of hearing the notified person and acting on objections to such report. In lieu of mailing notice as herein provided, personal notice may be executed and return made under oath, by any person appointed thereto by the Secretary of the District, in the same manner and upon the same persons, officers or agents as is, or may be, provided for service of citations in suits pending in the District Courts of Texas.

The Secretary of the District upon the first day of the hearing

shall file in the District's Office the original notice as published with his affidavit thereto, showing the manner of publication, the days on which, and the newspaper, or newspapers in which such notice was published, and shall also certify the names and addresses of all persons to whom notices have been mailed, or upon whom actual service may have been had; further, he shall affirmatively show that he has caused personal service to be executed, or has mailed to, or served upon, timely notice to each land owner whose address was known or could be known by the exercise of reasonable diligence.

(1) At, or before, the hearing upon the filed report of the Tribunal of Appraisement, any owner of land, or other property, affected by such report, or by the District's plans for improvements, either in person, or by an attorney or other agent, may file exceptions to all or any part of such report, and any person as to whose property no damages have been assessed, and who believes that his land, or other property, will be damaged by carrying out the plans for improvements, may, and shall, also file with the District a claim for such damages:

Said Tribunal, at the time and place named in such notice, shall proceed to hear evidence and determine all such objections and claims for damages, and shall make such changes and modifications from time to time as will cause its proposed decree to conform to the justice of each case under the facts presented; they may grant, in whole or in part, or may overrule, any claim for compensation or damage, or any other exception to their proposed report. Such hearing may be recessed from one day or place to other days and places, to be announced on open meeting, until all persons desiring a hearing have been heard.

When said Tribunal shall have finally determined all presented matters, concerning their proposed report, they shall enter their final decree concerning such proposed report insofar as it is confirmed, and approving and confirming the same as modified or changed, insofar as the same has been modified and changed, and shall in their decree condemn all such land, easements, rights of way, or other property, within or without the District, as shall have been deemed by the Directors of the District to be needed, and designated to make effectual and practicable the construction and operation of all works, improvements and services which may be planned ultimately to be provided by the District, and to accomplish any or all of the purposes designated in this Act. Said Tribunal shall have the power to apportion and adjudge costs incurred upon any hearing in such manner of allocation as may be deemed equitable. Such condemnation shall be either of the fee simple title, or of an easement only, as the Directors of the District may have elected and designated. The Tribunal shall adjudge and award all compensation for property to be taken, or placed under easement, and shall award all damages, if any there be allowable under the law.

A certified copy of the final decree of condemnation concerning the property in each County shall be filed with the County

Clerk of such County for record, and such record shall be notice to all persons of the contents of such decree. The original decree shall be a permanent record of the District and shall also constitute notice. The final decrees of said Tribunal concerning any matter shall be subject to Appeal, or Judicial Review, in the manner hereby specified, and not otherwise: Such Appeal, or Review, may be affected in the following specific manner:

The Directors of the District, in the name and behalf of the District, or any person having an interest in the decree of the appraisers, may appeal from the decree assessing or refusing to assess damages, or fixing compensation for the value of property taken or subjected to an easement; the only questions which may be considered on appeal shall be, whether just compensation has been allowed, or whether any damages are lawfully recoverable. Such appeals shall be taken to the District Court having jurisdiction over the area in which the land condemned is situated, either in whole or in part. The Courts of Jurisdiction shall be such number as are required to provide appeals in the jurisdiction within which any given land is situated. All appeals for each given County shall, however, constitute on proceeding on the docket of any such Court, as elsewhere is provided in this Act. Such District Courts shall have jurisdiction regardless of the amount or the number of the separate claims involved. Such appeal may be perfected as follows: Notice of appeal shall be given at any time within two (2) days after the entry of the final decree by the Tribunal of Primary Jurisdiction by filing written notice of an appeal, which shall be a simple statement that the undersigned gives notice of appeal from the decree entered on the date stated, and specifying the exact claims sought to be established by such appeal. This notice shall be filed with the Secretary of the District, and appellant shall within five (5) days after the entry of the decree appealed from file with the Clerk of the Court to which the appeal is being prosecuted an appeal bond with two or more good and sufficient sureties, in a amount to be double the costs, if any, already allocated to appellant, plus double the amount estimated by such Clerk to be incurred on the appeal being taken. Such bond shall be payable to such Clerk of the Court to which the appeal is being prosecuted and shall be subject to his approval as to sufficiency. The condition of such bond shall be that appellant will prosecute his appeal with affect, and pay all such costs as may be awarded against appellant by the Court. Unless an appeal is perfected, as herein provided, within seven (7) days after the day of the rendition of the final decree of said Tribunal, such decree, as to any given matter not so appealed from, shall be instantly final and conclusive, and there shall be no extension of time for the filing of an appeal bond. Within twelve (12) days after the entry of said final decree of condemnation, if appeal shall have been prosecuted therefrom, the Secretary of the District shall file with the Clerk of such Court a certified transcript of the final decree of con-

demnation, insofar as may be required to show the facts concerning the items of decision appealed from, together with the original notices of appeal, or a certificate showing the names and addresses of all persons who gave notice of appeal, and to include the stated grounds upon which each of such appeals has been predicted, as herein provided, and it shall not be necessary to file any other or additional pleadings in said Court. All appeals hereunder shall constitute one cause in the District Court and shall be so docketed. The docket shall, however, recite the name of each of the parties to the proceeding and shall be indexed accordingly. The Court, upon motion, may grant, or refuse to grant, a severance as to any separate claim arising out of distinction as to ownership. It is provided that an appealing District shall not be required to give a bond for costs. Upon the filing of said appeal the Court shall set the same down for a hearing, either in term time, or in vacation, before the Court without the intervention of a Jury, Notice of such hearing shall be given by the Clerk of the Court by mailing to each interested party, whose address is known, by registered mail, a letter giving advice of the date and purpose of the hearing, which shall be deemed sufficient notice. As to persons not actually served, or whose interest, or address is not known, the original publication of notice of the hearing by the District's Tribunal shall be deemed sufficient notice of all proceedings in the County Court. Such hearings shall be held at a time not less than ten (10) days, and not later than twenty (20) days after the day of the mailing of the notices herein directed to be given. An incomplete hearing may be recessed from one day to any other stated day, or may be continued to the next term, or succeeding terms, of the Court. Such hearings shall be by the Court given precedence over all Civil causes upon the docket not of a character involving the public welfare, shall be concluded with all reasonable dispatch, and shall be as summary in character as is consistent with the doing of full and complete justice.

The Court shall proceed to hear evidence proper to be considered under any filed exception. After having heard all evidence and argument offered, the Court in term time shall enter its final decree, either approving the decree of the Tribunal or Original Jurisdiction, modifying the same, or in any manner changing the same, so that the decree will in the Court's judgment conform to the justice of each specific case. As to all matters not herein specifically, or by logical intent, provided for, the Court's decree shall conform to the provisions of Title 52 of the Revised Civil Statutes of Texas.

Upon such appeals the claimant shall be considered the plaintiff, and the District shall be considered the defendant, save in those cases in which the District has filed exceptions to the report of the District's referees of appraisement. The admission of evidence and the fixing of awards, so far as applicable and not inconsistent herewith, shall be governed by the law and rules of procedure relating to trials and awards in damage suits. Ap-

peals may be taken from the Judgment of the District Court, as in Civil cases, and each appeal shall constitute a separate cause upon the docket of the Court of Civil Appeals.

No appeal from the decree of the Tribunal to condemn shall delay possession of the condemned property or prosecution of the work; provided, however, the District shall set apart in its designated depository, out of its Construction Fund, a total sum of money to be not less than double the amount of the total award made by the Tribunal of condemnation, plus such additional sum as may be deemed by the Directors of the District sufficient to pay the costs then incurred, and such costs as may be incurred upon appeal and said Fund must be applied to such payment, and shall not be used for any other purpose. Certificate of such reserve shall be made by the depository bank to the Clerk of the Court in which appeals may be pending. The Judge of said Court, upon motion made by any aggrieved appellant, may, in case of evident abuse of discretion by the Directors of the District, require the Directors of the District to increase this reserve Fund to a sum deemed by the Judge to be adequate to discharge final awards, which must be complied with before the District shall be authorized to take possession of any property condemned, or to cause damage to any property. In case of appeals by the District, they shall not be required to give bond, nor can they be required to give bond for costs. However, upon compliance herewith the title to all lands, easements, rights of way, or other property condemned shall, after payment, or provision for payment, of compensation, vest in the District, and it shall be entitled to immediate possession thereof.

No person owning or having any interest in any property affected by the District's plans for improvements and service, or its condemnation proceedings had after the giving of notice as herein provided, who has failed to file claim, or objection, or who has failed to appeal from any adverse ruling by the Tribunal to condemn on any claim or objections, as herein provided, shall thereafter be heard to claim from the District, its officers, contractors, agents or employees, any compensation for property or damage to property other than that which may have been already awarded by the Tribunal. It is, however, understood that this provision shall not apply to claims not incidents of lawful condemnation, construction and operation.

(m) It is specifically provided that nothing in this Section contained shall empower a District to condemn any land, property, easement or facility owned, held or used by another person, when such property is necessary to such person for the purpose of accomplishing any one or more of the purposes in this Act, save and except in such cases as the taking is to serve a public need superior to, or greater than, the use to which any such property may have been devoted.

(n) Any County, Levee District, or Navigation District of this State may elect to proceed to condemnation under the pro-

visions of, and in the manner established by, this Act, having regard only to causing such proceedings to conform to the Law of the being of any such governmental agency.

SEC. 4. The fact that various procedures of Districts operating under the provisions of this Act are in a state of uncertainty as to their powers and rights for procedures is delaying the development of the water resources of this State, which should not longer exist:

Wherefore the Legislature hereby declares an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days be and the same is hereby suspended, and this Act shall be in full force on and after that day on which there shall appear affixed hereto the certificates of final passage by the Speaker of the House of Representatives and the Presiding Officer of the Senate, subject only to the Constitutional right of the Governor to veto this Act. If there be no such veto the effective day shall be that day hereinabove fixed.

Approved June 1, 1931.

Effective May 14, 1931.

[NOTE: S. B. No. 586 passed the Senate by a vote of 22 yeas, 5 nays; passed the House by a vote of 107 yeas, 0 nays.]

WIFE AND CHILD DESERTION.

S. B. No. 628.]

CHAPTER 276.

An Act to amend Article 602 of the Penal Code, as amended, making it an offense for any husband to wilfully desert, neglect or refuse to provide for the support and maintenance of his wife, who may be in necessitous circumstances, or any parent who shall wilfully desert, neglect, or refuse to provide for the support and maintenance of any child, under a certain age; prescribing fines, penalties, and punishment; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. That Article 602 of the Penal Code of Texas, 1925 Revision, as amended, be and the same is hereby amended so as to hereafter read as follows:

"Article 602. Desertion of wife or child. Any husband who shall wilfully desert, neglect, or refuse to provide for the support and maintenance of his wife who may be in necessitous circumstances, or any parent who shall wilfully desert, neglect or refuse to provide for the support and maintenance of his or her child or children under sixteen years of age, shall be confined in the penitentiary for not more than two years, or be confined in jail for not more than six months, or fined not less than Twenty-five (\$25.00) Dollars nor more than Five Hundred